

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

RHONDA CAIN,

Plaintiff,

v.

Case No. 2:23-cv-695
JUDGE EDMUND A. SARGUS, JR.
Magistrate Judge Kimberly A. Jolson

BIRGE & HELD PROPERTY
MANAGEMENT, LLC,

Defendant.

ORDER

This matter is before the Court on Defendant Birge & Held Property Management, LLC's ("Birge") Motion to Consolidate Actions. (Birge Mot., ECF No. 62.) Defendant moved this Court pursuant to Fed. R. Civ. P. 42(a) to consolidate this case with another case that Plaintiff Rhonda Cain brought before this Court, *Cain v. AndMark Hidden Creek Apartments, LLC*, No. 2:24-cv-1787. The Defendant in that case, AndMark Hidden Creek Apartments, LLC ("AndMark"), filed a parallel Motion to Consolidate. (No. 2:24-cv-1787, ECF No. 43.) Upon Defendant AndMark's notice regarding its Ohio citizenship (No. 2:24-cv-1787, ECF No. 57), this Court *sua sponte* dismissed Plaintiff's case against Defendant AndMark due to a lack of diversity jurisdiction. (No. 2:24-cv-1787, ECF No. 60). Accordingly, Defendant Birge's Motion to Consolidate Actions (ECF No. 62) is **DENIED AS MOOT**.

In support of Defendant Birge's Motion to Consolidate Actions, Defendant Birge asserted that the two cases before this Court "are factually identical, and both arise out of injuries Rhonda Cain allegedly incurred on or around August 31, 2021." (Birge Mot., PageID # 1532.) Further, it argued that consolidation was appropriate (1) "because the issues, claims, defenses, legal theories,

discovery, witnesses, documents, and evidence are all essentially the same,” (2) “[b]oth lawsuits arise out of the same set of operative facts and will involve similar or identical parties, witness[es], and resources,” and (3) “consolidation in this matter will promote judicial economy, reduce the cost of litigation, expedite trial practice, and foster consistency in rulings.” (*Id.*, PageID #1534.)

Given Defendant Birge’s characterization of the relationship between Defendants AndMark and Birge and their relationship to Plaintiff Cain’s claims, and given that Defendant Birge’s Motion to Consolidate is now moot, this Court requires input from the parties regarding whether the case against Defendant Birge should continue in federal court or whether state court litigation with Defendant AndMark would be more appropriate.

Accordingly, the parties are **ORDERED** to file notice with this Court **within 10 days of this Order** regarding whether Plaintiff Cain’s case against Defendant Birge should continue before this Court or whether the case should be dismissed without prejudice for the purposes of pursuing state court litigation or another resolution of the matter. This case remains open.

IT IS SO ORDERED.

11/4/2024
DATE

s/Edmund A. Sargus, Jr.
EDMUND A. SARGUS, JR.
UNITED STATES DISTRICT JUDGE